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 7 MONTEREY TRANSFER & STORAGE, INC.

8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT - SAN JOSE DIVISION

10  
 11 RHONDA FARAH, ) Case No. C07-06044 JW  
 12 Plaintiff ) Complaint filed: 11/29/07  
 13 v. )  
 14 MONTEREY TRANSFER & )  
 15 STORAGE, INC., a California )  
 16 corporation, )  
 17 Defendant. )  
 18 \_\_\_\_\_ )  
 19  
 20 **MEMORANDUM OF POINTS AND AUTHORITIES**  
 21  
 22 **1. INTRODUCTION**  
 23 Plaintiff alleges that this matter is governed by the Carmack Amendment.  
 24 (Complaint, ¶1). Plaintiff also alleges that certain of her household goods were  
 25 missing and/or converted by Defendant. (Complaint, ¶¶18 and 23). Plaintiff  
 26 demands compensation for the alleged loss and has sued Defendant on both  
 27 // /  
 28 // /

1 federal and state law theories to recover same. (Complaint, ¶¶1, 18 and 23).<sup>1</sup> As  
 2 demonstrated herein, Plaintiff's remedy, if any, is found under federal law.

3 **2. THE CARMACK AMENDMENT IS PART OF A COMPREHENSIVE SCHEME**  
 4 **DESIGNED TO BRING UNIFORM TREATMENT TO EVERY FACET OF THE**  
 5 **CARRIER-SHIPPER RELATIONSHIP, INCLUDING FAILURE TO CARRY OUT**  
 6 **DELIVERY.**

7 Congress enacted the Carmack Amendment to the Interstate Commerce Act  
 8 ("ICA") in 1906, in response to the chaotic disparity which resulted from the  
 9 application of varying state laws to interstate shipping. The Carmack Amendment  
 10 defined the parameters of carrier liability for loss and damage to goods transported  
 11 under interstate bills of lading, bringing uniform treatment to the carrier-shipper  
 12 relationship. The Amendment, now set forth at 49 U.S.C. § 14706, states in relevant  
 13 part:

14       A carrier providing transportation or service . . . shall issue a  
 15       receipt or bill of lading for property it receives for  
 16       transportation under this part. That carrier . . . [is] liable to  
 17       the person entitled to recover under the receipt or bill of  
 18       lading. *The liability imposed under this paragraph is for*  
 19       *the actual loss or injury to the property . . .* (Emphasis  
 20       added.)

21       Within a few years of the Carmack Amendment's passage, the United States  
 22 Supreme Court addressed its dual goals of uniformity and preemptive scope. In the  
 23 seminal case of *Adams Express Co. v. Croninger*, 226 U.S. 491 (1913), the Supreme  
 24

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25  
 26  
 27       <sup>1</sup> Given Plaintiff's counsel's failure to include his California state bar number  
 28 combined with defense counsel's inability to locate Plaintiff's counsel on the California  
 State Bar website, it is unclear whether Plaintiff's counsel has authority to represent  
 Plaintiff in this court.

1 Court defined Carmack preemption in the broadest terms:

2                   Almost every detail of the subject [interstate common  
3                   carriers] is covered so completely that there can be no  
4                   rational doubt but that congress intended to take  
5                   possession of the subject, and supersede all state  
6                   regulations with reference to it . . . *Id.* At 505-06.

7                   *Adams Express* held that claims arising out of loss or damage to property transported  
8                   in interstate commerce are governed by the Carmack Amendment and that all state  
9                   law claims are preempted. The Court explained the primary objective of the statute  
10                   is the establishment of a uniform national policy governing liability of interstate  
11                   carriers.

12                   [T]his branch of interstate commerce was being subjected  
13                   to such a diversity of legislative and judicial holding that it  
14                   was practically impossible for a shipper engaged in a  
15                   business that extended beyond the confines of his own  
16                   state, or a carrier whose lines were extensive, to know,  
17                   without considerable investigation and trouble, and even  
18                   then oftentimes with but little certainty, what would be the  
19                   carrier's actual responsibility as to the goods delivered to it  
20                   for transportation from one state to another. The  
21                   congressional action has made an end to this diversity . . .

22                   *Id.* at 505.

23                   Three years later, the Supreme Court reaffirmed *Adams Express* in *Georgia, Florida and Alabama Ry. Co. v. Blish Milling Co.*, 241 U.S. 190 (1916). *Blish Milling*  
24                   held that the Carmack Amendment is "comprehensive enough to embrace  
25                   responsibility for all losses resulting from any failure to discharge a carrier's duty as

1 to *any part* of the agreed transportation . . . ." 241 U.S. at 196. (Emphases added.)

2        Each succeeding Supreme Court decision interpreting the scope of Carmack  
 3 had repeated the principles enunciated *Adams Express* and *Blish Milling*, the  
 4 comprehensiveness of application and uniformity of treatment regardless of state  
 5 laws. See, e.g. *Thurston Motor Lines, Inc. v. Jordan K. Rand, Ltd.* 460 U.S. 533, 535  
 6 (1983) quoting *Louisville & Nashville R. Co. v. Rice*, 247 U.S. 201, 203 (1918) ("As to  
 7 interstate shipments, . . . the parties are held to the responsibilities imposed by the  
 8 federal law, to the exclusion of all other rules of obligation."); *New York, N.H. & H.R.*  
 9 *Co. v. Nothnagle*, 346 U.S. 128, 131 (1953) *Charleston & Western Carolina Ry Co. v.*  
 10 *Varnville Furniture Co.* 237 U.S. 597 (1915) (holding that preemption applies not only  
 11 to state law claims which directly contradict the procedures or remedies set out in  
 12 Carmack, but also encompasses state causes of action which supplement Carmack  
 13 relief); *Atchison T. & S.F. Ry. v. Harold*, 241 U.S. 371, 378 (1916).

14        All Circuit Courts of Appeal, including the Ninth Circuit, have held that  
 15 Carmack's broad scope *completely preempts all state law claims*, whether they  
 16 contradict or supplement Carmack remedies. *Hughes Aircraft v. North American Van*  
 17 *Lines* 970 F.2d 609, 613 (9<sup>th</sup> Cir. 1992) ("Hughes [the shipper] wisely concede[d] that  
 18 federal law preempts any state common law action against . . . a common carrier.");  
 19 *Cleveland v. Beltman North American Van Lines Co. Inc.* 30 E.3d at 379 (2d Cir.  
 20 1994) (Carmack preempted federal common law claim for punitive damages based  
 21 upon bad faith claims handling); *Shao v. Link Cargo (Taiwan) Limited* 986 F.2d 700,  
 22 706-707 (4<sup>th</sup> Cir. 1993) ("[I]f the Interstate Commerce Commission had jurisdiction  
 23 over the shipment in this case, Shao's common law claims are preempted by the  
 24 Carmack Amendment") *Morris v. Covan Worldwide Moving, Inc.*, 144 F.3d 377, 383  
 25 (5<sup>th</sup> Cir. 1998) (Carmack preempted plaintiff's claims for compensatory, emotional  
 26 and punitive damages based on the carrier's alleged "egregious conduct in the  
 27 28

1 course of discharging its duties under the shipping contract"); *Moffit v. Bekins Van Lines* Co. 6 F.3d 305, 306-07 (5<sup>th</sup> Cir. 1993) (Carmack Amendment preempted  
 2 claims of misrepresentations, fraud, gross negligence, intentional infliction of  
 3 emotional distress and violation of Texas Deceptive Trade Practices Act; *W.D. Lawson & Company v. Penn. Central Company*, 456 F.2d 419, 421 (6<sup>th</sup> Cir. 1972)  
 4 ("As to the . . . issue . . . [of] whether or not the Carmack Amendment preempted  
 5 common law suits . . . we hold that it did"); (*Hughes v. United Van Lines* 829 F.2d  
 6 1407, 1415 (7<sup>th</sup> Cir. 1987) ("[We] hold that the remedy provision of the Carmack  
 7 Amendment preempts all state and common law remedies inconsistent with the  
 8 Interstate Commerce Act . . .") *Underwriters at Lloyds of London v. North American*  
 9 *Van Lines*, 890 F.2d 1112, 1120 (10<sup>th</sup> Cir. 1989) ("[T]he Carmack Amendment  
 10 preempts state common law remedies against a carrier for negligent damage to  
 11 goods shipped under a proper bill of lading.") *Smith v. United Parcel Service* 296  
 12 F.3d 1244, 1246-49 (11<sup>th</sup> Cir. 2002) (Carmack preempted plaintiffs' claim for  
 13 damages due to the carrier's alleged failure to provide service to the plaintiffs).

14 Last year, the Ninth Circuit Court of Appeals expanded the preemptive ambit of  
 15 the Carmack Amendment in deciding the matter of *Hall v. North American Van Lines, Inc.*, 476 F.3d 683 (9<sup>th</sup> Cir. 2007).

16 "Our holding in *Hughes* applies to *Hall*'s common law fraud  
 17 and conversion claims, even though *Hall*'s claims arise from  
 18 events other than loss or damage to their property. ***It is well***  
 19 ***settled that the Carmack Amendment constitutes a***  
 20 ***complete defense to common law claims alleging all***  
 21 ***manner of harms.*** See *Southeastern Express Co. v. Pastime Amusement Co.*, 299 U.S. 28, 29 (1936) (delay);  
 22 *Blish Milling*, 241 U.S. at 197 (mistaken delivery); *Adams*

Express, 226 U.S. at 505-06 (loss). It applies equally to fraud and conversion claims arising from a carrier's misrepresentations as to the conditions of delivery or failure to carry out delivery. See *Blish Milling*, 241 U.S. at 197 (conversion, or "trover"); *Smith v. United Parcel Serv.*, 296 F.3d 1244, 1247 (11th Cir.2002) (dismissing claims that carrier committed fraud by accepting shipments it "had no intention of fulfilling or attempting to deliver") (emphases added)(internal quotation marks omitted)).

Thus, the *Hall* Court found that a shipper's claims that the household goods carrier engaged in conduct tantamount to extortion did not escape the preemptive ambit of Carmack. Further, the *Hall* Court explained that Plaintiff cannot circumvent preemption by alleging "finer distinctions" between types of contracts and damages. *Hall, supra*, 476 F.3d at 688.

16 It is against this vast and pervasive backdrop that Plaintiffs' state law claims  
17 must be viewed. Stated succinctly, Plaintiffs' claims - which are predicated entirely  
18 upon provisions of California's Civil Code - cannot escape the preemptive ambit of  
19 Carmack.

**3. THE STATE LAW CLAIMS ASSERTED BY PLAINTIFF IN THE COMPLAINT ARE PREEMPTED BY THE CARMACK AMENDMENT.**

As it is undisputed that Plaintiff has alleged the application of the Carmack Amendment in her litigation, it is clear that Plaintiff's causes of action for breach of contract and conversion which are based on California state law are *completely preempted* by the Carmack Amendment and should be dismissed with prejudice.

The need for uniformity and certainty are the exact reason why state law claims for damages are precluded by the Carmack Amendment. *Cleveland v.*

1 *Beltman North American Co., supra*, at 373; See also, *Pietro Culotta Grapes v.*  
 2 *Southern Pacific Transport*, 917 F. Supp, 713 (E.D. Cal. 1996).) As Plaintiff has  
 3 alleged the application of the Carmack Amendment in her Complaint, it is clear that  
 4 Plaintiff's state-law based causes of action are *completely preempted* by the  
 5 Carmack Amendment and should be dismissed with prejudice.

6 Plaintiff should be given leave to amend her Complaint to assert one cause of  
 7 action for damages under the Carmack Amendment to the Interstate Commerce Act.  
 8 (49 USC 14706).

9 **4. CONCLUSION**

10 The Court should dismiss, with prejudice, Plaintiff's entire action, under Rule  
 11 12(b)(6) of the Federal Rules of Civil Procedure and under the Carmack Amendment.

13 Dated: January 10, 2008

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